

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANDRAE HALL, DONTE THOMAS, SEAN ROSE,
PATRICK GUILLAUME, KENNETH REGAN,
and JEREMY TONEY,

Plaintiffs,

-against-

ORDER
21-CV-0006(JS) (ST)

SUFFOLK COUNTY CORRECTIONAL FACILITY
WARDEN FRANCHIE,

Defendant.

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APPEARANCES:

For Plaintiffs: Andrae Hall, 753586, pro se
Donte Thomas, pro se
Sean Rose, pro se
Patrick Guillaume, 760728, pro se
Kenneth Regan, pro se
Jeremy Toney, 689969, pro se
Suffolk County Correctional Facility
110 Center Drive
Riverhead, New York 11901

For Defendant: No appearance.

SEYBERT, District Judge:

On January 4, 2021, plaintiffs Andrae Hall ("Hall"),
Donte Thomas ("Thomas"), Sean Rose ("Rose"), Patrick Guillaume
("Guillaume"), Kenneth Regan ("Regan"),¹ and Jeremy Toney
("Toney"), who are incarcerated and proceeding pro se, filed a

¹ Kenneth Regan is listed on the Notice of Petition (see Compl. at ECF p. 7), among other places, but not on the cover page of the Complaint (see id. at ECF p. 1.)

Complaint in this Court pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) For the reasons that follow, the claims brought by Thomas, Rose, and Regan are DISMISSED WITHOUT PREJUDICE; Hall, Guillaume, and Toney are GRANTED leave to proceed in forma pauperis; and this action is CONSOLIDATED with Butler, et al. v. DeMarco, et al., No. 11-CV-2602 (JS) (ST) (E.D.N.Y.).

I. Claims Brought by Plaintiffs Thomas, Rose, and Regan are Dismissed Without Prejudice

Only Hall signed the Complaint and completed an application to proceed in forma pauperis ("IFP") and the required Prisoner Litigation Reform Authorization ("PLRA") form. (See Compl.; IFP Mot., ECF No. 3; PLRA Form, ECF No. 2.) Accordingly, by Notice of Deficiency dated January 6, 2021, the Court notified Plaintiffs Thomas, Rose, Guillaume, Regan, and Toney that they must return a signed copy of the Complaint and either remit the filing fee or complete and return an IFP application and PLRA form, which were provided by the Court. (Notice of Def., ECF No. 5.)

Notice sent to Thomas at his address of record was returned to the Court and marked "discharged" and "unable to forward" (see ECF No. 9) and, to date, he has not updated his address nor has he otherwise communicated with the Court. Further, to date, Plaintiffs Rose and Regan have not complied with the Notice nor have they otherwise communicated with the Court

regarding this case. Accordingly, claims brought by Plaintiffs Rose, Thomas, and Regan are DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b).

II. Plaintiffs Hall, Guillaume, and Toney are Granted Leave to Proceed In Forma Pauperis

After the Court mailed the Notices of Deficiency, Plaintiff Toney timely filed a signed copy of the Complaint and Plaintiffs Toney and Guillaume timely completed and filed IFP applications and PLRA forms. (Guillaume PLRA Form, ECF No. 7; Guillaume IFP Mot., ECF No. 8; Toney PLRA Form, ECF No. 12; Toney IFP Mot., ECF No. 14;² Toney Compl., ECF No. 10.) Upon review of the declarations submitted by Hall, Guillaume, and Toney (hereinafter, "Plaintiffs") in support of their IFP applications, the Court finds that they are qualified by their respective financial status to commence this action without prepayment of the filing fee. Accordingly, the applications to proceed in forma pauperis are GRANTED.

III. This Action is Consolidated with the Consolidated Action

Pursuant to this Court's January 23, 2012 Consolidation Order in Butler, et al. v. DeMarco, et al., No. 11-CV-2602 (JS) (ST)

² Toney originally submitted an incomplete IFP application. (Toney First IFP Mot., ECF No. 11.) The Court sent Toney a second Notice of Deficiency (ECF No. 13) and, on or around February 16, 2021, Toney submitted an updated IFP application (see ECF No. 14).

(E.D.N.Y.) (the "Consolidated Action"), the Court has reviewed the Complaint and finds that it relates to the subject matter of the Consolidated Action. (Consol. Order, No. 11-CV-2602, ECF No. 327.) Accordingly, this action shall be consolidated with the Consolidated Action. This affects Plaintiffs in the following ways:

1. Plaintiffs in this action shall become a member of the certified classes in Butler (No. 11-CV-2602);³

³ The classes are defined as follows:

(1) [A]n Injunctive Class comprised of all persons who, now or at any time in the future, are or will be detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in the SCCF [Suffolk County Correctional Facility], with separate subclasses for those persons detained in Riverhead and Yaphank; and

(2) [A] Damages Class comprised of all persons who are or were detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in the SCCF and who were or will be released from the SCCF on or after April 5, 2009, with separate subclasses for those persons detained in Riverhead and Yaphank.

(See Aug. 29, 2016 Order, No. 11-CV-2602, ECF No. 428, at 2-3.)

On August 29, 2016, in the Consolidated Action, this Court adopted then-Magistrate Judge Gary R. Brown's Report and Recommendation and granted the Consolidated Action Defendants' cross motion to amend the class definitions to "exclude all Suffolk County Correctional Facility inmates 'who were or have been housed exclusively at the new jail facility in Yaphank, New York.'" (Id. at 3-5.)

2. Any claims in the instant Complaint that are not included in the Consolidated Amended Complaint in Butler shall be severed (see Consol. Order at 17 (describing the process for proceeding with any severed claims after the resolution of the Consolidated Action)); and
3. Plaintiffs, as members of the class, shall be represented by pro bono counsel, Shearman & Sterling LLP.⁴

A copy of the Consolidation Order and the Consolidated Amended Complaint (the operative Complaint) in Butler are annexed to this Order.

If Plaintiffs do not wish to proceed as members of the Consolidated Action, they must inform the Court, in writing, within thirty (30) days after receiving a copy of this Order. Upon receipt of such a letter, the Court will direct the Clerk of the Court to sever this Complaint from the Consolidated Amended Complaint and reopen and reinstate this individual pro se action.

CONCLUSION

For the foregoing reasons, Plaintiffs' applications to proceed in forma pauperis (ECF Nos. 3, 8, and 14) are GRANTED and this action is CONSOLIDATED with the Consolidated Action. The

⁴ Counsel's mailing address is:

Daniel Hector Rees LaGuardia
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022

Counsel's telephone number is: (212)848-4000.

claims brought by Thomas, Rose, and Regan are DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of the Court is directed to terminate the motion pending at ECF No. 11; consolidate this action with Butler, et al. v. DeMarco, et al., No. 11-CV-2602; mail a copy of this Order, the Order of Consolidation (No. 11-CV-2602, ECF No. 327), and the Consolidated Amended Complaint (No. 11-CV-2602, ECF No. 334) to Plaintiffs Hall, Guillaume, and Toney at their addresses of record; mail a copy of this Order to Plaintiffs Thomas, Rose, and Regan at their addresses of record; and mark this case CLOSED.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 4, 2021
Central Islip, New York